at a time when the period within which the action against a third party could be brought had expired. He also informed the court that the first defendant was not calling any witnesses. After the first defendant had given his evidence however, his counsel informed the court that his client then expressed a wish to call a witness. In the interests of justice I allowed an adjournment to enable the first defendant to call his witness.

The evidence of the first defendant's witness Tan Wee Hua was that he was a P.W.D. contractor and that he supplied granite to the P.W.D. He came to know the first defendant in the course of his business and that on a certain date in September 1957 he engaged the first defendant to supply him with explosives to blast the quarry. He went on to say that Chua was his *kepala* and that he was present when the blasting operations took place. He further said that after the all clear he did not hear any other explosion.

Having carefully considered the evidence produced by both sides, I accepted the evidence of the plaintiff and the corporal as to what took place on that day and rejected the evidence of the defendant and his witness that there was no further explosion after the all clear. As was pointed out by counsel for the plaintiff, the plaintiff and his witness were not cross-examined on the question of the explosion after the all clear. Their story on that point in fact was not challenged. All that was put to the plaintiff was that he did not take the right type of cover for his own safety.

It was clear from the evidence that the *kepala* as the shot-firer was negligent in giving the all clear without making certain that there were not going to be any further explosions. I therefore held the first defendant liable in damages. The plaintiff was present at the quarry in pursuance of a public duty and was consequently in the same position as an invitee (see *Read* v. *J. Lyons & Co. Ltd.*[2]), so that it was the duty of the first defendant as an invitor to take reasonable care for the safety of his invitee (see *London Graving Dock Co. Ltd.* v. *Horton*[3]). The case of *Mitchell* v. *National Coal Board*[4] cited by counsel for the plaintiff to my mind was a case in point.

As regards general damages I allowed $12,500 for the loss of one eye, following a similar award by Ismail Khan J. in Malacca Civil Suit No. 108 of 1964. Evidence was produced before me that as a result of his loss of one eye the plaintiff has lost all chances of further promotion in the police service. It is of course not possible to say that but for the loss of his eye the plaintiff would have definitely got further promotions, but in view of the fact that there was every likelihood of his being promoted at least to the rank of a police sargeant, in which event he would get a bigger salary over a period of years and a bigger pension on retirement, he was entitled to damages for loss of earnings by reason of his having been deprived of all chances of further promotion. I assessed such damages at $6,000 which I considered fair and reasonable in all the circumstances of the case. I allowed $100 in respect of special damages claimed. I thus gave judgment for the plaintiff against the first defendant in the sum of $18,000 with interest on $12,500 at 6% per annum from 20th September 1957 to date of judgment and thereafter on the aggregate at 6% per annum until the date of realisation and costs.

Judgment for the plaintiff.

Solicitors: *Sault, Keith Sellar & Co.; Chelvam & Co.*

HAJI ABDULLAH v. HUA HONG & ORS.

[O.C.J. (Ali J.) September 23, 1968]
[Muar — Civil Suit No. 155 of 1964]

Practice and Procedure — Costs — Taxation — Joint defendants in motion for declaration for ownership of car — Failure of 1st defendant to enter appearance — Judgment against both defendants with costs — Finding of fact that 1st defendant was not the agent of the 2nd defendant — Whether plaintiff entitled to recover his full taxed costs from 2nd defendant.

In an action for a declaration of ownership of a car and the return of its registration card against the defendants, the 1st defendant was sued as an agent and the 2nd defendant as his principal. The 1st defendant did not enter appearance. The 2nd defendant disputed the plaintiff's right of ownership. At the conclusion of the trial judgment was entered for the plaintiff against both defendants, and as regards costs it was ordered: "the 1st and 2nd defendants do pay to the plaintiff the costs of and incidental to this action". The plaintiff's bill of costs had been taxed and the 2nd defendants had paid half of it. They refused to pay the other half. On an application for the judge's ruling,

Held: the plaintiff was entitled to have the remaining half of the taxed costs from the 2nd defendants.

Case referred to:—

(1) *Stumm* v. *Dixon* (1889), 22 Q.B.D. 529.

SUMMONS-IN-CHAMBERS.

D. A. Devadason for the plaintiff.

L. M. Ong for the 2nd defendants.

Cur. Adv. Vult.

Ali J.: The plaintiff in this action entered into an arrangement with the 1st defendant, a motor car dealer in Segamat, for the purchase of a Mercedes Benz car. At first the plaintiff informed the 1st defendant that he would not be able to pay the full purchase price of the car. Upon taking delivery of the car the plaintiff signed certain documents in blank as given to him by the 1st defendant. One of these docu-

ments was apparently a hire purchase agreement with the 2nd defendant, a finance company in Singapore who was to finance the purchase of the car. But a few months after the delivery of the car the plaintiff on receiving the invoice decided to pay the full purchase price of the car. He made this payment to the 1st defendant who gave him a receipt. On his inquiry regarding the documents he had signed, the plaintiff was told by the 1st defendant that those documents would be destroyed. The truth of it all, however, was that the 1st defendant had sent the documents to the 2nd defendant and had received the full amount under the hire purchase agreement. Without the knowledge of either the plaintiff or the 2nd defendant, the 1st defendant used this money for his own purpose and apparently made certain payments to the 2nd defendant as though these were payments by the plaintiff. But when certain instalments fell in arrears the plaintiff received notice from the 2nd defendant. It was then that he realised the document he signed had not been destroyed and that the registration card was in the possession of the 2nd defendant. He accordingly protested to the 2nd defendant saying that he did not receive any money from them, which was true, and that he himself had paid the full purchase price of the car, which was also true. But the 2nd defendant maintained that regardless of what happened they were the legal owners of the car under the terms of the hire purchase agreement and refused the plaintiff's demand for the registration card. Hence this action for a declaration of ownership and the return of the registration card.

In the action the 1st defendant was sued as an agent and the 2nd defendant as his principal. For obvious reason the 1st defendant did not enter appearance, but no step was taken by the plaintiff to obtain judgment against him by default. The 2nd defendant, however, entered appearance and filed a defence disputing the plaintiff's right of ownership to the car. At the conclusion of the trial judgment was entered for the plaintiff against both defendants and, as far as I am aware, there is no appeal against this judgment. The judgment was made in common form and as regards costs the terms of the formal order are expressed thus:—

"The 1st and 2nd defendants do pay to the plaintiff the costs of and incidental to this action."

The plaintiff's bill of costs has been taxed and the 2nd defendant has paid half of it. On the 2nd defendant's refusal to pay the other half the plaintiff protested saying that he is entitled to recover his full taxed costs from the 2nd defendant. In the event both the plaintiff and the 2nd defendant applied for a ruling which I think should have been made by the taxing master himself. However, as both parties have elected to adopt this course of action, each will have to pay his costs of the application.

The question raised in the applications was considered in *Stumm* v. *Dixon*,[1] in which there was a dissenting judgment. This case was referred to in *Mallal's* Supreme Court Practice at page 1087. No other authority on the point was or could be cited. In the judgment of Lord Esher M.R. the rule was stated in these words:—

"In my opinion the true rule is this: when an action is tried against two or more defendants, and any defendants separates in his defence, and the judgment is against all, the law is that each of them is liable for the damage awarded by the judgment, and each of them is liable to the plaintiff for all costs taxed on his behalf as properly incurred by him in the maintenance of his action, except as to costs caused to him by so much of the separate defence of any defendant as is, and can only be, a defence for that defendant as distinguished from other defendants. With regard to such costs so caused to the plaintiff, he is entitled by law to recover them against that defendant alone who has so caused him to incur them."

In terms of this rule the plaintiff in the present action is entitled to turn to any of the two defendants for his full taxed costs. The exception to this rule applies only when there is a separate defence. In point of fact there was only one defence and that was the defence filed by the 2nd defendant. No separate defence was filed by the 1st defendant as to bring this case within the exception to this rule. In the event it must be ruled that the plaintiff is entitled to recover the full costs from the 2nd defendant. In fairness to the 2nd defendant it must be stated here that their argument is that there was a finding of fact that the 1st defendant was not the agent of the 2nd defendant, and on that finding it is only right that costs should be equally apportrioned between the two defendants. With respect I cannot see the force of this argument by the 2nd defendant. It might be different — I say no more than this — if it had come from the 1st defendant. Accordingly it must be ruled that the plaintiff is entitled to have the remaining half of the taxed costs from the 2nd defendant.

Order accordingly.

CHAN HUA ENG v. LIM BENG HUI

[F.C. (Azmi C.J. (Malaya), Suffian & MacIntyre F.JJ.) October 6, 1968]

[Johore Bahru—Federal Court Civil Appeal No. X5 of 1968]

Practice and Procedure — Account stated — Action on — Absence of admission by defendant that he owed money.

Failure to reply — Whether amounts to an admission.

One of the essential ingredients of an account stated is an admission by the defendant that he owed the money.